IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.844 of 2007

Reserved on 29.11.2007

Date of decision 20.12.2007

Manbag Singh Petitioner

Vs.

Union of India and others Respondents

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Petitioner: Mr. Imran Khan, Advocate.

For the respondents: Mr.M.A.Khan, Central Govt. Counsel.

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the petitioner was recruited in the Central Reserved Police Force as Constable General Duty in the year 1994. He was posted in 121 Battalion at Udhampur in the year 1995.

A preliminary inquiry was conducted against the petitioner and Constable .Naushad Ahmed. The petitioner as well as Naushad Ahmed were put under suspension vide order dated 20.12.2005. He was served with a charge sheet on 20.1.2006. He did not file any reply to the same. The Enquiry Officer was appointed vide order dated 6.2.2006 to enquire into the articles of charges leveled against the petitioner. He was directed

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[1] Whether reporters of local papers are allowed to see the judgment? No.

vide letter dated 14.4.2006 to appear before the Enquiry Officer on 17.4.2006.

It appears from the record that statements of the witnesses were recorded in the presence of the petitioner except the statement of one SI Sanjay Belwal. The Enquiry Officer vide his report dated 30.6.2006 came to the conclusion that the charges against the petitioner and Naushad Ahmed were proved. A copy of the Enquiry Report was furnished to the petitioner on 10.7.2006. The petitioner submitted reply to the same on 18.8.2006. The Disciplinary Authority vide order dated 29.8.2006 dismissed the petitioner from the service. The petitioner preferred an appeal against the order dated 29.8.2006. The appeal was dismissed by the Appellate Authority on 6.10.2006. The petitioner filed a revision petition against the said appellate order. The revision petition was also dismissed by the Inspector General of Police on 6.3.2007.

Mr.Imran Khan learned counsel appearing for the petitioner had strenuously argued that the disciplinary proceedings have not been conducted against the petitioner in accordance with law. He then submitted that the penalty of dismissal inflicted upon the petitioner is disproportionate to the alleged misconduct. Mr.M.A.Khan, learned Central Government Counsel appearing on behalf of the respondents had supported the orders passed by the competent authority.

I have heard the learned counsel for the parties and have also gone through the record carefully.

The petitioner was served with article of charges on 20.1.2006. He has not chosen to file any reply to the same. His statement was recorded by the Enquiry Officer on 10.5.2006 and was directed to produce any documentary evidence or witness in his defence within 15 days. In his reply he has stated that he does not intend to produce any witness or

document in his defence before the Enquiry Officer. The Enquiry Officer had examined Sita Ram (witness No.1), Sanjay Belwal (witness No.2), Kanwar Singh (witness No.3), Isrile Khan (witness No.4), Ratnamani Dass (witness No.5) and Surjeet Singh (witness No.6). The statement of Sanjay Belwal was recorded in the absence of the petitioner and for that explanation of the Enquiry Officer is that earlier the petitioner was not present being on leave and thereafter Sanjay Belwal had to go to join a long term course. The petitioner, Kanwar Singh and Naushad Aehmad were also medically examined. It has come in the medical report that the petitioner had not consumed any liquor. Naushad Ahmed had also not consumed any liquor on the day of occurrence i.e. 20.10.2005. It has also come in the medical report that Surjeet Singh had also not consumed any liquor.

The petitioner belonged to disciplined force. If he was in any manner agitated about the duty roster he should have approached the higher authorities instead of assaulting HC/GD Kanwar Singh on 20.12.2006. HC/GD Kanwar Singh had sustained injuries as per the medical report. The explanation given by the petitioner that in fact he was beaten up by Kanwar Singh cannot be believed in view of the over whelming evidence against him. SI Sita Ram Sharma and SI Sanjay Belwal had come on the spot on 20.12.2005 and had pacified the parties. The petitioner has not filed any reply to the memorandum of articles of charges. He has not produced any witness though opportunity was granted to him. He has been provided with a copy of the enquiry report to which he has filed reply on 18.8.2006. The Disciplinary Authority has passed speaking order on 29.8.2006 dismissing him from the service. The Appellate Order dated 6.10.2006 is also well reasoned order and cannot be interfered by this Court. The Appellate Authority has dealt with all the issues raised by the petitioner in his memo of appeal. Similarly the

order passed by the Reviewing Authority dated 6.3.2007 is a speaking order. The issues raised by the petitioner in his revision petition have been dealt with in detail by the Inspector General of Police.

Thus the only conclusion which can be drawn from the above discussion is that the proceedings have been conducted in accordance with law and the orders passed by the Disciplinary Authority, Appellate Authority and Reviewing Authority are in accordance with law and the same are speaking orders.

Now the Court has to consider whether the penalty inflicted upon the petitioner in the peculiar facts and circumstances of the case is disproportionate to the alleged misconduct or not. The petitioner belonged to disciplined force. It has been established during the course of enquiry that the petitioner along with Naushad Ahmad had assaulted HC/GD Kanwar Singh being agitated over the duty roster. He had no business to assault his senior. This act of the petitioner cannot be condoned. Accordingly, it is held that the penalty of dismissal imposed on the petitioner is not disproportionate to the alleged misconduct. Consequently, the writ petition is dismissed.

No costs.

December 20, 2007 (g) **(Rajiv Sharma), J.**